

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

CHRISTOPHER L. HEITMANN

PLAINTIFF

V.

CIVIL ACTION NO. 3:22-CV-85-KHJ-MTP

PLANET FIT INDY 10 LLC;
JOHN DOES 1-10; and
XYZ CORP 1-9

DEFENDANTS

ORDER

Before the Court is Defendant Planet Fit Indy 10 LLC's ("Planet Fit") Motion to Dismiss [3]. For the following reasons, the Court denies the motion.

Planet Fit moves to dismiss Plaintiff Christopher Heitmann's Complaint for insufficient service of process under Federal Rules of Civil Procedure 12(b)(5) and 4(m). [3] at 1. Federal Rule 4(h)(1) prescribes methods for serving corporations, partnerships, or associations. Fed. R. Civ. P. 4(h)(1). A corporation may be served with process under the laws of the state where service is made. *See* Fed. R. Civ. P. 4(h)(1)(A). Mississippi's service of process rules allows a plaintiff to serve a corporation "by delivering a copy of the summons and of the complaint to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Miss. R. Civ. P. 4(d)(4). Further, Mississippi Rule 4(h) directs that service must be made upon a defendant within 120 days after the complaint is filed. *See* Miss. R. Civ. P. 4(h).

Heitmann argues that Planet Fit was properly served with process in accordance with Mississippi Rule 4 because Capitol Corporate Services, Inc. accepted the summons and Complaint as a registered agent for Planet Fit. Pl.'s

Resp. [9] ¶ 3; Proof of Service [9-1]. But Planet Fit contends that Capitol Corporate Services is not its registered agent for service of process because Planet Fit is not admitted to do business in Mississippi and therefore does not have a registered agent in the state. Def.'s Reply [11] at 3; Miss. Sec. of State Business Name Search [11-1]. In fact, Planet Fit points out that it is organized and does business in Indiana, with Corporation Services Company in Indiana as its registered agent for service of process. *Id.* Accordingly, Planet Fit concludes that it was not properly served with process within the 120-day period, allowing for dismissal. [3] at 3.

The Court agrees that Planet Fit was not properly served with process. Because Capitol Corporate Services is not Planet Fit's registered agent, Capitol Corporate Services' acceptance did not act as proper service under Mississippi Rule 4. The Court, however, denies Planet Fit's Motion to Dismiss [3] without prejudice, and allows Heitmann until May 5, 2022, to accomplish valid service of process and to file proof of valid service.

SO ORDERED AND ADJUDGED this the 5th day of April, 2022.

s/ *Kristi H. Johnson*

UNITED STATES DISTRICT JUDGE